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IN THE

Supreme Court of the United States

October Term, 1954

No. 838

RAYMOND C. ARMSTRONG,

Petitioner,

v.

MARY R. ARMSTRONG,
GENERAL MOTORS CORPORATION, et al.,

Respondents.

REPLY BRIEF IN SUPPORT OF PETITION FOR CERTIORARI

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IN THE

Supreme Court of the United States

October Term, 1954

No. 645

RAYMOND C. ARMSTRONG,

Petitioner,

v.

MARY R. ARMSTRONG,
GENERAL MOTORS CORPORATION, et al.,

Respondents.

REPLY BRIEF IN SUPPORT OF PETITION FOR CERTIORARI

There is nothing in *Williams* v. *North Carolina*, 325 U. S. 231; that overrules *Thompson* v. *Thompson*, 226 U. S. 551. See *Estin* v. *Estin*, 334 U. S. 541, 546, footnote 4. The *Williams* case merely *extended* the right to a spouse to obtain a divorce outside of the matrimonial domicile, but it in no way *limited* the powers of the courts of the matrimonial domicile to fully and completely adjudicate the marital difficulties.

The respondent now takes the position that the Florida court did not have jurisdiction on the theory that the denial of an award of alimony was *in personam*. However, the court in Florida in this case found that Mrs. Armstrong, the respondent, was a resident of Florida, that

there was substantial property in Florida, and on those grounds assumed jurisdiction (See Appendix 5a, Petition for Writ of Certiorari).

The Florida court could have awarded alimony to respondent and the decree would have been enforcible against the property in the state. *Pennington* v. *Fourth National Bank*, 243 U. S. 269. The action was one clearly *quasi in rem*: Cf. *Boone* v. *Bank of Wachovia Trust Co.*, 163 F. (2d) 809 (C. A. D. C.); *Burkhard* v. *Circuit Court*, 146 Fla. 457.

The court however, found that because of her misconduct, Mrs. Armstrong, the respondent, was not entitled to any alimony or rights in the Florida property. The Florida courts are not required to allow alimony in all cases, but under the provisions of Section 65.08 of the Florida Statutes, where a wife is guilty of misconduct, whether alimony is to be allowed rests in the sound discretion of the chancellor. *Phinney* v. *Phinney*, 77 Fla. 850.

In the recent case of *McIntyre* v. *McIntyre*, 53 So. (2d) 824 (Fla.), it was held that the wife's removal to another state is insufficient to rebut the presumption as to her domicile being that of her husband. "To effect a change of domicile there must be a removal and an intent."

The Florida Court held that the residence, citizenship and matrimonial domicile of both the parties in this case at the time of the divorce on October 2, 1951, was Florida. By an action filed February 1, 1952, Mrs. Armstrong, the respondent, was permitted to attack that finding collaterally, and obtain alimony in Ohio. The Ohio courts did not give full faith and credit to the entire judgment in Florida, but permitted it to be impeached. Since property was situate in Florida, since Mrs. Armstrong under Florida law was still a resident of Florida, the courts of that state had full power to adjudicate the marital difficulties even

though Mrs. Armstrong was served only by publication. That was substantially the rule laid down in *Thompson* v. *Thompson*, 226 U. S. 551, which the Ohio courts seek to overturn.

The Constitution does not abridge the right of a state to deal with property and its own residents, even though they have fled elsewhere. Because of the matrimonial domicile, Florida had a substantial continuing jurisdiction. A removal from the Florida domicile did not cause the courts of that state to lose jurisdiction, particularly when respondent had actual knowledge of the proceedings and declined to appear.

After reviewing the cases, Justice Pitney said in the *Thompson* case:

> "the state of Virginia had jurisdiction over the marriage relation, and the proper courts of that state could proceed to adjudicate respecting it upon grounds recognized by the laws of that state, although the wife had left the jurisdiction and could not be reached by formal process."

Here we have similar facts, and Florida as well as Virginia had sufficient dominant interests to completely adjudicate the marital affairs of those who had a matrimonial domicile within its borders. The respondent had ample opportunity to contest, but declined to do so. She should not be permitted at a later date to relitigate the issues in Ohio.

Respectfully submitted,

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